Supreme Court, U.S.
FILED
OCT 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-140

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

BART B. CHAMBERLAIN, JR., *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States

---

SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

Of Counsel:
PHILIP A. LACOVARA
GEOFFREY F. ARONOW
HUGHES HUBBARD & REED
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 626-6200

KEITH A. JONES *
JOHN M. SIMPSON
FULBRIGHT & JAWORSKI
1150 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 452-6800

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-140

BART B. CHAMBERLAIN, JR., *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States

---

SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

The principal question presented by the petition concerns the circumstances under which a corporate officer may be held financially responsible for the corporation's federal statutory liabilities. This supplemental memorandum is filed to call the Court's attention to the First Circuit's recent analysis of this question in *DeBrecini v. Graf Brothers Leasing, Inc.*, No. 87-1198 (Sept. 18, 1987).

It will be recalled that in the instant case the Temporary Emergency Court of Appeals ("TECA"), at the government's urging, devised and applied a new "central

role" theory of personal liability. Although TECA acknowledged that there was no basis in the case for piercing the corporate veil, and did not find any congressional intent to make corporate officers personally liable for their corporations' overcharges, it nevertheless treated Bart Chamberlain's management role as an independent and sufficient basis for making him jointly and severally liable for the corporations' debts as a matter of federal common law.

The First Circuit in *DeBrecini* similarly was urged to endorse a new and expansive theory of personal liability for corporate officers. Like TECA, the First Circuit was asked to adopt an "economic reality test" that "would permit personal liability solely because [the corporate officer and principal shareholder] maintained 'virtually complete control of the day to day operations of [the corporation].'" Slip op. 4. But unlike TECA, the First Circuit refused to adopt a rule of personal liability that would so completely undermine the basic premise of American corporate law:

> the principle of limited liability is a cornerstone of corporate law. . . . Limited liability allows individuals to take a calculated risk when they engage in the investment and entrepreneurial ventures central to a capitalist economy. If the venture fails, corporate shareholders lose only their interest in the corporation, not their homes or life savings. Of course, the principle of limited liability has itself been limited by the common law doctrine which permits the piercing of the corporate veil and by statutory exception, . . . but we have here neither an explicit statutory exception nor an allegation that the corporate form was ignored.

Slip op. 4-5.

The First Circuit in *DeBrecini* concluded that "the principle of limited liability for corporate debts is long-standing enough and important enough to be considered

a background norm, against which Congress may act of course, but which is controlling in the absence of such action." Slip op. 7. Because Congress had not chosen to alter the principle of limited liability in the statute there at issue, the First Circuit refused to do so.

The First Circuit's decision in *DeBrecini*, like the decisions from other circuits discussed in the petition,[1] is fundamentally at odds with TECA's decision in this case. Unlike TECA, the First Circuit properly recognizes that when neither traditional common law principles nor Congress itself has placed corporate officers' "homes or life savings" in jeopardy, it is not the province of the federal courts to do so through the exercise of raw judicial power.

For the reasons stated here and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Of Counsel:
PHILIP A. LACOVARA
GEOFFREY F. ARONOW
HUGHES HUBBARD & REED
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 626-6200

KEITH A. JONES *
JOHN M. SIMPSON
FULBRIGHT & JAWORSKI
1150 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 452-6800

* Counsel of Record

[1] *See, e.g., Connors v. P & M Coal Co.*, 801 F.2d 1373 (D.C. Cir. 1986); *Solomon v. Klein*, 770 F.2d 352 (3d Cir. 1985); *United States v. Sexton Cove Estates, Inc.*, 526 F.2d 1293 (5th Cir. 1976).